

REMARKS

The Office Action and references cited therein have been carefully considered. All previously submitted Claims 1-38 stand rejected. Claims 1-38 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over Claims 1 and 9 of copending and co-owned U.S. Publication No. 2005/0058763. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-5, 8-11, 13-16, 30-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,162,474 to Chen, et al. or U.S. Patent No. 5,607,707 to Ford, et al., in view of U.S. Patent No. 6,641,847 to Nawar.

Applicants sincerely thank the Examiner for advising that Claims 6, 7, 12, 36 and 38 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and that Claims 17-29 are allowable over the prior art with a terminal disclaimer. In response, Claims 6 and 38 have been cancelled. In addition, Claim 1 has been amended to incorporate the limitations of Claim 6; Claims 7 and 12 have been rewritten in independent form to include all of the limitations of the base claim and any intervening claims; and Claim 30 has been amended to include the limitations of Claim 38. Claim 31 has also been amended in a sincere effort to clarify the subject matter that Applicants regard as the invention. Applicants have also filed a terminal disclaimer herewith so that Claims 17-29 are allowable.

A Revocation of Power of Attorney and accompanying Statement under 37 C.F.R. 3.73(b), along with an Assignment and accompanying Form PTO-1595 are also submitted herewith.

Applicants respectfully submit that Claims 1-5, 7-35, 36 and 37 now before the Examiner are in proper form for favorable consideration and allowance. Accordingly, Applicants respectfully request the withdrawal of all rejections of Claims 1-5 and 7-37 now pending in the present application.

Double Patenting Rejection

Applicants submit herewith a terminal disclaimer to obviate the double patenting rejection of Claims 1-38 based on co-owned U.S. Publication No. 2005/0058763, which, like the present application, was filed on September 12, 2003. Accordingly, Applicants respectfully solicit reconsideration and withdrawal of the double-patenting rejection of Claims 1-38.

Claim Rejections under 35 U.S.C. § 112

Claim 31 is rejected as being indefinite in the use of the phrase “and maintaining selected flavor sensory attributes.” The Office action sets forth that it is not known which flavor attributes Applicants are referring to. The phrase in question has been amended herewith to “and maintaining *said* flavor sensory attributes.” The flavor sensory attributes that are maintained during storage are described in the specification, for example, on page 4, paragraph [0015], to include “fresh orange and raw orange flavor.”

Applicants respectfully submit that Claim 31, as amended, is not indefinite and is, therefore, patentable. Accordingly, Applicants respectfully solicit reconsideration and withdrawal of the rejection of Claim 31 under 35 U.S.C. §112.

Claim Rejections under 35 U.S.C. § 103

In view of the amendments to Claims 1, 7, and 30, Applicants respectfully submit that the rejection of Claims 1-5, 8-11, 13-16, 30-35, and 37 under 35 U.S.C. § 103 has been obviated. In particular, Claim 1 has been amended to include the limitations of allowable Claim 6. None of the cited art, either alone or in combination, discloses or suggests a citrus juice composition comprising citrus juice and a tocopherol composition of at least one tocopherol other than alpha- tocopherol, wherein the tocopherol composition comprises from 0 weight percent to 20 weight percent of alpha- tocopherol, as recited in present Claim 1. Applicants respectfully submit, therefore, that independent Claim 1, as amended, is patentable over the prior art of record. In addition, at least by virtue of their dependency from Claim 1, Claims 2-5, 8-11, and 13-16 are likewise patentable over the prior art of record.

In addition, none of the cited art, either alone or in combination, discloses or suggests a method for maintaining flavor sensory attributes in citrus juice beverages, as recited in present Claim 30, which includes adding a tocopherol composition to a citrus juice beverage to provide an improved citrus juice beverage, wherein the tocopherol composition includes no more than about 20 weight percent alpha-tocopherols, when present, based on the total weight of tocopherols in said composition. The tocopherol composition is in a range of from about 40 ppm to about 1300 ppm of the citrus juice. Applicants respectfully submit, therefore, that independent Claim 30, as amended, is patentable over the prior art of record. In addition, at least by virtue of their dependency from Claim 30, Claims 31-37 are likewise patentable over the prior art of record.

Accordingly, Applicants respectfully request that the rejection of pending Claims 1-5, 8-11, 13-16, 30-35, and 37 under 35 U.S.C. § 103 be reconsidered and withdrawn.

CONCLUSION

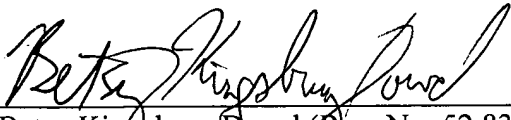
Entry of the amendments to Claims 1, 7, 12 and 30 and cancellation of Claims 6 and 38, and acceptance of the terminal disclaimer submitted herewith, are respectfully requested. A Revocation of Power of Attorney and accompanying Statement under 37 C.F.R. 3.73(b), along with an Assignment and accompanying Form PTO-1595 are also submitted herewith. In view of the terminal disclaimer, amendments, and foregoing remarks, favorable reconsideration and allowance of pending Claims 1-5, and 7-37 are respectfully and earnestly solicited.

Fees for entry of the terminal disclaimer and for the addition of two more independent claims are submitted herewith. If it is believed that any additional fees are due, please charge our deposit account No. 06-0923.

The Examiner is invited to telephone Applicants' attorney to discuss any open or additional issues in order to expedite prosecution of this application.

Respectfully submitted,

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